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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

Case No:

ALAIN MICHAEL, an individual on
behalf of himself all others similarly
situated; LYNETTA HUFFMAN,
individually and on behalf of all others
similarly situated; KAREN ASHER, on
behalf of herself and all other similarly
situated

Plaintiffs,

v.

NUTRISHUS BRANDS, INC., a
Georgia Corporation; and DOES 1
through 50, Inclusive,

Defendants.

**PLAINTIFFS' CLASS ACTION
COMPLAINT**

1. COMMON LAW FRAUD
2. INTENTIONAL
MISREPRESENTATION
3. NEGLIGENT
MISREPRESENTATION
4. UNJUST ENRICHMENT
5. CONSUMERS LEGAL REMEDIES
ACT, CAL. CIV. CODE §§ 1750, *et*
seq.
6. VIOLATION OF THE FALSE
ADVERTISING LAW ("FAL"),
CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17500, *et*
seq.
7. VIOLATION OF THE UNFAIR
COMPETITION LAW ("UCL"),
CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17200 *et*
seq.

DEMAND FOR JURY TRIAL

Plaintiff Alain Michael (Plaintiff Michael"), Plaintiff Lynetta Huffman ("Plaintiff
Huffman") and Plaintiff Karen Asher ("Plaintiff Asher" and collectively hereinafter

1 “Plaintiffs”) , by and through their attorneys, brings this action on behalf of themselves
2 and all other similarly situated against Nutrishus, Inc. (“Defendant Nutrishus”), and Does
3 1 through 50. Plaintiffs hereby allege, on information and belief, except as those
4 allegations which pertain to the named Plaintiffs, which allegations are based on personal
5 knowledge, as follows:

6 **NATURE OF THE ACTION**

7 1. To capitalize on the premium price consumers are willing to pay for forms
8 of sweeteners and syrups that purportedly lack the harmful side effects of traditional
9 sugar, Defendant Nutrishus intentionally makes false and misleading representations
10 about its “RxSugar®” product line, which includes three types/flavors of syrups and
11 liquids: (i) “organic liquid sugar”; (ii) “organic maple syrup”; and (iii) “organic chocolate
12 syrup.” (hereinafter collective referred to as “the Products.”).

13 2. Defendant Nutrishus deceive consumers about their sugar substitutes to take
14 advantage of diabetics, as well as individuals who are seeking out healthier forms of
15 desserts and sweet foods. Aware that consumers place a higher value on alternatives to
16 sugar that can sweeten food without the negative impact that is typically associated with
17 sugar, including weight gain and exacerbation of diabetes, Defendants deliberately make
18 false and misleading statements about the nutritional value and health benefits of their
19 Products

20 3. In reality, none of these claims about the Products are true because
21 Defendants’ have based them on a manipulated and incorrect serving sizes. Specifically,
22 Defendants have predicated their marketing scheme for the Products on a serving size
23 that is lower than the reference amount that is customarily consumed”(RACC) required
24 by federal and state law. If Defendants calculated the Products’ nutritional value on the
25 actual serving size that was mandated by law, then none of the claims on the Products’
26 front label and packaging would be true. By using a serving size that is lower than the
27 required RACC, Defendants purposely mislead consumers into thinking that the
28 Products lack the harmful side effects of sugar, and thereby increase profits at the

1 expense of unsuspecting individuals. Additionally, Defendants further misbrand the
2 Products and deceive consumers by consistently perpetuating misleading and false health
3 and structure/function claims about the Products.

4 4. At all relevant times, Defendants packaged, advertised, marketed,
5 distributed and sold the Products to consumers at retail store locations throughout
6 California and the United States based on the misrepresentation that the Products were
7 “0 calories,” “0 net carbs,” or “0 glycemic.” In reality, the Products do not confer any of
8 these purported nutritional and health benefits to consumers. The Products actually are
9 not zero calorie, zero net carbs or zero glycemic.

10 5. Reasonable consumers rely on product labelling in making their purchasing
11 decisions. When a consumer sees a substitute sweetener or syrup labelled as “ “zero
12 glycemic,” “zero calories,” “zero net carbs,” s/he reasonably expects the food item to be
13 harmless and lack the health dangers typically associated with sugar. In reliance on
14 Defendants’ misleading marketing and deceptive advertising practices for the Products,
15 Plaintiffs and similarly situated class members reasonably thought they were purchasing
16 a substitute sweetener alternative to sugar and syrup that provided benefits and value for
17 the human body. In fact, neither Plaintiffs nor any of the member of the putative class
18 received any of the health benefits, nutritional value or food composition they
19 reasonably thought they were buying.

20 6. Plaintiffs and other consumers purchased the Products because they
21 reasonable believed, based on Defendants’ packaging and advertising that the Products
22 provided certain health benefits and helped avoid particular physiological harms. Had
23 Plaintiffs and other consumers known that the Products actually lacked the nutritional
24 value and health benefits that were advertised on the front labels and packages, they
25 would not have purchased the Products or would have paid significantly less for them.
26 As a result, Plaintiffs and other similarly situated class members have been deceived and
27 suffered economic injury.
28

7. Defendants' labelling, marketing and advertising uniformly involves multiple false and misleading statements, as well as material omissions of fact, concerning the Products that have injured Plaintiffs and the class by tricking them into buying a sugar substitute product and alternative sweetener that is entirely different from what they sought at the time of purchase.

8. Based on the fact that Defendants' advertising misled Plaintiffs and all others like them, Plaintiffs bring this class against Defendants to seek reimbursement of the premium they and the Class Members paid due to Defendants' false and deceptive representations about the serving size, health impact and nutrient content levels of the Products.

9. Plaintiffs seek relief in this action individually and on behalf of all purchasers of the Products statewide in California for common law fraud, intentional misrepresentation negligent misrepresentation, and unjust enrichment. Additionally, Plaintiffs seek relief in this action individually and on behalf of all purchasers of the Products in California for violation of the California Bus. & Prof. Code §§17500, *et seq.*, California’s False Advertising Law (“FAL”), and Bus. & Prof. Code §§17200, *et seq.*, California’s Unfair Competition Law (“UCL”).

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to the 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act, because the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs, and, at least one class member is a citizen of a state different from Defendant Nutrishus. Additionally, more than two-thirds of the members of the class reside in states other than those in which Defendants are citizens and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

11. The Court has personal jurisdiction over Defendant Nutrishus pursuant to Cal. Code Civ. P. § 410.10, as a result of Defendant Nutrishus' substantial, continuous and systematic contacts with the State, and because Defendant Nutrishus has purposely

availed itself to the benefits and privileges of conducting business activities within the State.

12. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this action because a substantial part of the events, omissions and acts giving rise to the claims herein occurred in this District. Moreover, Defendant Nutrishus distributed, advertised and sold the Products, which are the subject of the present Complaint, in this District.

PARTIES

13. Plaintiff Michael is a resident of California, and lives in Los Angeles County. Plaintiff Asher is a resident of Merced County. Plaintiff Huffman is a resident of Los Angeles County.

14. Defendant Nutrishus is a corporation headquartered in the State of Georgia, with its principal place of business at 1450 West Peachtree Street NW #200, PMB 14642, Atlanta, Georgia, 30309-2955. Defendant Nutrishus manufactures, mass markets, and distributes the Products throughout California and the United States.

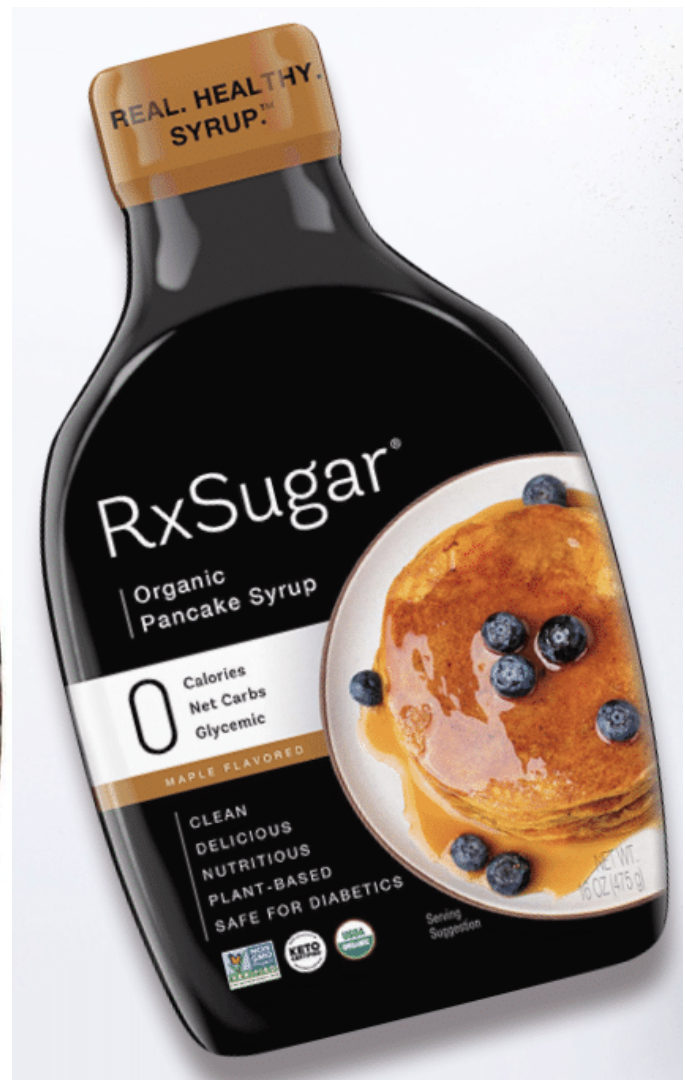
15. Plaintiffs are informed and believe, and based thereon allege that at all times relevant herein each of these individuals and/or entities was the agent, servant, employee, subsidiary, affiliate, partner, assignee, successor-in-interest, alter ego, or other representative of each of the remaining Defendants and was acting in such capacity in doing the things herein complained of and alleged.

16. Plaintiffs reserve their right to amend this Complaint to add different or additional defendants, including without limitation any officer, director, employee, supplier, or distributor of Defendants Nutrishus who has knowingly and willfully aided, abetted, or conspired in the false and deceptive conduct alleged herein.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

17. Consumers often purchase sugar and syrup substitutes to avoid the harmful side effects of traditional granulated white table sugar. The trend towards sugar replacements and alternative forms of sweeteners has grown as more studies continue to emerge about the dangers of sugar. Additionally, especially as diabetes rates increase

1 throughout the nation, the demand for sugar replacements is swelling, so that diabetics
2 can eat sweet foods without worsening their condition. Defendants knew or had reason
3 to know that consumers would find the challenged attributes important in their decision
4 to purchase the Products, as indicated by the fact that Defendants repeatedly emphasize
5 the advertised claims prominently on the front labels of the Products' packaging in
6 capital letters and an eye-catching font that quickly garners a consumer's attention.
7 Defendants consistently advertise the Products as "0 Calories," "0 Net Carbs" and "0
8 Glycemic." These misrepresentations are further enforced by the fact that the Products'
9 front packaging bears a "keto certified" seal and displays statements about the Products
10 being "safe for diabetics." However, Defendants' labelling and marketing scheme for
11 the Products is blatantly false. The Products are not actually zero calories, zero net carbs,
12 nor zero glycemic.



1 18. 21 U.S.C. § 343 states that a food product is misbranded if “its labelling is
2 false or misleading in any manner, with “labelling” defined as “all labels and other
3 written, printed, or graphic matter (1) upon any article or any of its containers or wrappers
4 or (2) accompanying such article¹.” Similarly, under California’s Sherman Food, Drug
5 and Cosmetic Law (“Sherman Law”), Article 6, §110660, “Any food is misbranded if its
6 labelling is false or misleading in any particular.” Additionally, pursuant to the Nutrition
7 Labelling and Education Act (“NLEA”), the FDA deems a food product misbranded if
8 it lacks appropriate nutritional labelling. *See* 21 U.S.C. § 403(q).

9 19. As part of the FDA’s labelling requirements, a food’s nutritional facts and
10 content disclosures must be based on a serving size that reflects an amount that is
11 “customarily consumed.” *See* 21 U.S.C. § 343(q)(1)(A)(i). The FDA has established
12 distinct “reference amount customarily consumed (RACC)” for certain foods, whereby
13 a food producer must use a minimum serving size equal to the FDA’s determined RACC
14 to calculate its corresponding food item’s nutritional values. *See* 21 C.F.R. §§101.9(b)(2)
15 and 101.9(b)(6). A food manufacturer’s failure to adhere to the FDA’s regulated RACC
16 constitutes unlawful misbranding. *See* 21 U.S.C. § 403(q). Furthermore, Chapter 4 of
17 California’s Sherman Law, §§ 110290 incorporates the NLEA and the FDA’s prohibition
18 on false or misleading nutritional content and RACC statements.

19 20. The FDA has determined an explicit RACC level for the Products. The
20 agency has also expressed a preference to base serving sizes on actual consumption
21 habits. *See* “Dietary Guidelines for Americans: U.S. Department of Agric. And U.S.
22 Dep’t of Health and Human Services (7th ed. 2010) at 27-9. Likewise, the NLEA requires
23 that serving sizes reflect the amounts people actually eat. Fortin, Neal, “*Food Regulation*
24 *Law, Science, Policy and Practice*”, p.68 (2017). Under 21 C.F.R. §101.12, the RACC
25 for syrup replacements such as the Products is two tablespoons. Hence, Defendant
26 Nutrishus must base the Products’ nutritional content values on a minimum serving size
27 of two tablespoons. Yet, as made clear by the Products’ back panel, Defendant Nutrishus
28

¹ *See* 21 U.S.C. § 321 (m)

1 has relied on a serving size of one tablespoon, one-half of the minimum amount required
2 by the FDA. By using an amount that is one-half of the legally required serving size
3 minimum, Defendant Nutrishus cements the foundation for the false and misleading
4 claims it systematically advertises on the Products' front labels. If Defendant Nutrishus
5 followed the FDA's parameters for the RACC of syrups and used the agency's
6 mandatory minimum serving size to ascertain the Products' nutritional values, then the
7 Products would not actually be "0 calories," "0 net carbs," or "0 glycemic," as boldly
8 advertised on the Products' front panel. For example, the FDA limits "zero calorie"
9 claims to food items that contain less than five calories per serving. *See* 21 C.F.R. §
10 101.9(c)(1). Here, two tablespoons of the Products would have more than five calories
11 and not meet the FDA's qualifications for the "zero calorie" labels. Hence, by
12 manipulating the Products' serving size, Defendant Nutrishus has deceived consumers
13 about their health benefits and risks.

14 21. Indeed, the very labelling and packaging changes that Defendants
15 implemented after being apprised of their CLRA violations, as detailed in this Complaint,
16 demonstrate the Products' inaccurate labelling scheme. As indicated by comparison
17 between Products' pre-September 2021 and post-September 2021 packaging, somehow
18 one tablespoon of the Products has zero calories and ten grams of carbohydrates. Yet,
19 two tablespoons of the same formulation has ten calories and twenty-grams of
20 carbohydrates. Hence, when Defendants used the incorrect serving size and manipulated
21 the RACC, they falsely represented and underreported the Products' calorie count and
22 carbohydrate levels.

23 22. Notably, the Ninth Circuit has affirmed that "technically correct labels can
24 be misleading." *Bruton v. Gerber Prods. Co.*, No. 15-15174, 2017 WL 1396221 (9th Cir.
25 Apr. 19, 2017). Thus, even if the Products' front labels make technically true statements
26 about one tablespoon of the Products, Defendants are still liable for deceptive
27 advertising. Furthermore, Defendants know that consumers will foreseeably devour
28 more than one tablespoon of the Products and end up digesting a volume that lacks all

1 the advertised claims, especially when the Products' packaging touts statements like
2 "clean," "safe for diabetics" and "plant-based." Aside from the fact that the FDA has set
3 the RACC for food items like the Products at twice as much as Defendants' serving size
4 for the Products, Defendants themselves encourage consumers to use more than one table
5 spoon of the Products with tactics such as covering the Products' front label and bottlecap
6 design with eye-catching all cap bold claims like "REAL. HEALTHY." Therefore,
7 Defendants have sufficient notice that individuals will consume multiple servings of the
8 Products, and foreseeably eat amounts of the sugar substitute syrups that are not "zero
9 calories, "zero glycemic," or "zero net carbs."

10 23. Under the NLEA, the FDA deems a food product misbranded if it advertises
11 nutrient content claims² that have not been defined by the FDA, or fall outside the FDA's
12 established definitions. *See* 21 U.S.C. §§ 343(Q) and (R); and *See* 21 C.F.R. § 101.13.
13 Similarly, Article 6 of California's Sherman Law, §§ 110665 and 110670 adopt the
14 NLEA and the FDA's prohibition on false or misleading nutrient content claims. Here,
15 the Products' front labels exhibit at least two nutrient content claims: "zero calorie," and
16 "zero net carbs." Both of these claims are false because they are based on an incorrect
17 serving size and illegitimate RACC.

18 24. Structure or function claims are claims that refer to a structure or function
19 of the body (hereinafter referred to as "structure/function claims"). Structure/function
20 claims describe a food ingredient's role in affecting or maintaining normal human
21 structure or body functions. Under the FDCA, food is misbranded if its labelling contains
22 false or misleading structure or function claims. California's Sherman Law, Article 6,
23 §110670, imposes the same prohibition on false and misleading structure/function
24 claims. The Products' front labels clearly advertise "0 Glycemic" in discrete, visible bold
25 letters. This claim, which reflects glycemic index, constitutes a structure/function claim
26 because it refers to the structure and function of blood sugar levels. The "zero glycemic"

27 ² *See* FDCA §403(r)(2)(C), which defines nutrient content claims as "any direct statement about the level or range of a
28 nutrient in the food," or "describes a food or an ingredient in a manner that suggests that a nutrient is absent or
present in a certain amount."

1 claim tells a consumer that eating the Products will not raise blood sugar levels, thereby
2 providing information about the Products' impact on a structure and function of the
3 human body. However, in reality, the Products' structure/function claims are false and
4 misleading because the syrup replacements' composition does not result in a zero
5 glycemic index. Here, despite diligent investigation and research efforts, no evidence
6 was found that any of the Products' ingredients result in zero glycemic levels or have a
7 relationship to any of the health benefits represented on the Products' front labels.
8 Accordingly, it is reasonable to conclude that Defendants do not possess any
9 substantiation for the structure/function claims it has advertised on the Products.
10 Defendants' "Zero Glycemic" health claim is unlawfully deceptive because it misleads
11 consumers to conclude that the Products are healthy, especially for diabetics Here,
12 Defendant Nutrishus advertises and emphasizes a collection of front label claims on the
13 Products that altogether lead a reasonable consumer to think that the Products are good
14 for individuals and that the Products confer particular benefits for diabetics. When a
15 person, especially one who has diabetes and who must monitor her sugar levels, sees the
16 claims "0 glycemic," "0 calories," and "0 net carbs" in conglomeration, especially when
17 presented with statements about "safe for diabetics," she will reasonably think that the
18 food product is good for her and a liquid sugar or syrup that diabetics can safely use.
19 Moreover, she will reasonably believe that she can consume the substitute syrup without
20 side effects of weight gain, diabetes, or diabetes aggravation. In reality, the Products are
21 not free from any of these dangers. As clarified in the discussion above, the Products
22 contain carbohydrates, and likely have an abundance of calories as well. Furthermore,
23 the Products likely cause increases in blood sugar levels and are not genuinely "zero
24 glycemic," thereby carrying serious risks for diabetics. In reality, there is no scientific
25 evidence that proves that the Products have a zero glycemic value, or prevent blood sugar
26 spikes. Notably, some studies have indicated that sugar substitutes like the Products can
27 have the same effect as sugar on the human body, especially in terms of triggering
28 increases in appetite. Lustig, Robert, " *Effects of Sweeteners on Glucose, Insulin, and*

1 *Energy Intake.*” Int’l J. of Obesity (2005). Additionally, these studies have concluded
2 that sweetening and sugar substitutes like allulose do not have any unique or special
3 benefits over sugar. In other words, these studies demonstrate that the purported health
4 benefits that Defendants advertise on the Products’ front labels are unsubstantiated, false
5 and deceptive. Furthermore, these studies show that Plaintiffs are not relying on “lack of
6 substantiation” legal theories here. On the contrary, Plaintiffs here can survive a “lack of
7 substantiation” “challenged because they have cited studies that show the deceptive nature
8 of each of Defendants’ advertised claims. *Bronson v. Johnson & Johnson, Inc.*, 2013
9 U.S. Dist. LEXIS 54029, at *22 (N.D. Cal. Apr. 16, 2013).

10 25. Defendants’ labelling and advertising of the Products violate the mandates
11 of the Federal Food, Drug and Cosmetics Act, the correlative mandates of the Sherman
12 Law, and are unfair and deceptive in violation of the California Civil Code § 1770.

13 26. Plaintiffs purchased units of the Products in reliance upon the labelling and
14 advertising of the Products’ above-detailed nutrient content and nutritional value claims,
15 without knowledge of the fact that all the statements about the Products’ purported
16 advantages were actually false. Defendants knows or has reason to know that consumers
17 would find the challenged attributes important in their decision to purchase the Products,
18 as indicated by the fact that Defendants repeatedly emphasizes the advertised claims
19 prominently on the front labels of the Products’ packaging in capital letters and an eye-
20 catching font that quickly garners a consumer’s attention. Consequently, because the
21 Products have deceptive serving sizes, misleading nutritional content reporting and fail
22 to provide the advertised health benefits, consumers are not receiving the benefit of their
23 bargain.

24 27. Plaintiffs consumed units of the Products as intended and would not have
25 purchased them if they had known that the advertising as described herein was false,
26 misleading and deceptive. Plaintiffs suffered injury in fact and are entitled to restitution
27 damages in an amount to be determined at trial. It is beyond reproach that the Products
28 advertise blatantly inaccurate nutritional panels, as well as false and misleading nutrient

1 content claims to prey on diabetics and trick consumers. Yet, Defendants have
2 systematically and consistently continued to make false allegations about the nutritional
3 components and health benefits of the Products on the sugar and syrup replacements'
4 front labels. Reasonable consumers rely on product labelling in making their purchasing
5 decisions. When a consumer sees a substitute sweetener labelled as " "0 glycemic," "0
6 calories," "0 net carbs," especially in combination with statements that emphasize safety
7 for diabetics, she reasonably expects the sugar replacement to be harmless and lack many
8 of the health dangers typically associated with sugar. In reliance on Defendants'
9 misleading marketing and deceptive advertising practices of the Products, Plaintiffs and
10 similarly situated class members reasonably thought they were purchasing a food product
11 that provided benefits and value for the human body. In fact, neither Plaintiffs nor any
12 of the member of the putative class received any of the health benefits, nutritional value
13 or food composition they reasonably thought they were buying. Defendants have no
14 reasonable basis for labelling, advertising, marketing and packaging the Products as
15 being beneficial to health or an innocuous liquid sugar and syrup substitute that is
16 especially safe for diabetics. As a result, consumers are consistently misled into
17 purchasing the Products for the commonly known and/or advertised benefits and
18 characteristics when in fact no such benefits could be conferred by the Products.

19 28. Defendants' marketing, labelling, and packaging of the Products are
20 designed to, and do in fact, deceive, mislead and defraud consumers. Defendants have
21 no reasonable basis for labelling, advertising, marketing and packaging the Products as
22 being beneficial to health or an innocuous sugar and syrup substitutes that are especially
23 safe for diabetics. As a result, consumers are consistently misled into purchasing the
24 Products for the commonly known and/or advertised benefits and characteristics when
25 in fact no such benefits could be conferred by the Products. The malicious actions taken
26 by Defendants caused significant harm to consumers. Plaintiffs and similarly situated
27 class members who purchased the Products because they reasonably believed, based on
28 Defendants' marketing, packaging, labelling and advertising schemes, that the Products

1 were in fact zero net carbs, zero glycemic, zero calorie, and safe for diabetics. Thus,
2 Plaintiffs were economically harmed by Defendants' misbranding, false labelling,
3 deceptive marketing and misleading packaging of the Products. The value of the
4 Products that Plaintiffs actually purchased and consumed was materially less than its
5 value as misrepresented by Defendants.

6 29. Plaintiff Michael purchased at least one unit of the Products' "maple Syrup"
7 flavor from a Los Angeles-based supermarket in late 2020 or early 2021, before
8 Defendants modified the Products' deceptive labelling scheme. Plaintiff Huffman
9 bought at least one unit of the Products' "chocolate syrup" flavor from a Los Angeles-
10 based "Walgreens" store location in 2019 or 2020, when the Products still displayed the
11 false advertisements detailed herein. Plaintiff Asher bought units of the Products' "maple
12 syrup" and chocolate flavors throughout the time period of 2020 to 2022. Plaintiff Asher
13 made her purchases of the Products online, as well as at retail supermarket locations in
14 Merced County, and bought units of the Products that advertising Defendants' deceptive
15 marketing scheme and representations as described in this Complaint.

16 30. Plaintiffs purchased units the Products throughout California during the
17 relevant time period. Plaintiffs bought and consumed the Products because, based on
18 Defendants' marketing and labelling scheme, they believed that the Products were in fact
19 zero net carbs, zero glycemic, zero calorie, and safe for diabetics. Plaintiffs purchased
20 the Products in reliance upon the nutritional and health benefits that Defendants
21 advertised and marketed throughout the Products' labelling, and packaging, without
22 knowledge of the fact that the Products perpetuated a misbranded RACC, and that they
23 were not actually zero net carbs, zero glycemic, zero calorie, or safe for diabetics.
24 Plaintiffs consumed the Products as intended and would not have purchased units the
25 Products if they had known that the advertising as described herein was false, misleading
26 and deceptive. During the time when they were purchasing and consuming the Products,
27 Plaintiffs did not take steps to verify the Products' components or nutrient levels.
28 Reasonable consumers such as Plaintiffs would not have considered it necessary to verify

1 the clear message conveyed by Defendants' labelling, advertising, marketing and
2 packaging of the Products. Plaintiffs would consider purchasing the Products again if the
3 labelling were accurate.

4 **RULE 9(B) ALLEGATIONS**

5 31. Federal Rule of Civil Procedure 9(b) provides that "[i]n alleging fraud or
6 mistake, a party must state with particularity the circumstances constituting fraud or
7 mistake." Fed. R. Civ. P. 9(b). To the extent necessary, as detailed in the paragraphs
8 above and below, Plaintiffs have satisfied the requirement of Rule 9(b) by establishing
9 the following elements with sufficient particularity:

10 32. WHO: Defendants made material misrepresentations and omissions of fact
11 in the labelling, packaging and marketing of the Products.

12 33. WHAT: Defendants made material misrepresentations and omissions of fact
13 by labelling, packaging and marketing the Products as "zero carb," "zero glycemic," and
14 "zero net carbs" and by misbranding the Products with a prohibited serving size.
15 Defendants made these claims with respect to the Products even though the Products
16 were not in fact zero calories, zero glycemic, zero net carbs, nor meet the requirements
17 to make such claims. Defendants' misrepresentations and omissions were material
18 because a reasonable consumer would not have purchased or paid as much for the
19 Products if he or she knew that they contained false representations.

20 34. WHEN: Defendants made the material misrepresentations and omissions
21 detailed herein continuously throughout the Class Period.

22 35. WHERE: Defendants' material misrepresentations and omissions were
23 made, *inter alia*, on the labelling of the Products, on Defendants' website, and throughout
24 Defendants' various other marketing and advertising scheme for the Products.

25 36. HOW: Defendants made written misrepresentations and failed to disclose
26 material facts on the labelling and packaging of the Products and on their website and
27 other advertising.
28

37. WHY: Defendants engaged in the material misrepresentations and omissions detailed herein for the express purpose of inducing Plaintiffs and other reasonable consumers to purchase and/or pay a premium for the Products based on the belief that they actually were zero net carbs, zero calories and zero glycemic. Defendants profited by selling the Products to millions of unsuspecting consumers statewide in California, as well as nationwide.

CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this class action on behalf of themselves individually and all others similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3). Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this class action on behalf of themselves individually and all others similarly situated statewide in California. Plaintiffs seek to represent a class comprised of all persons in California who, on or after September 10, 2017 in California, (the “Class Period”) purchased the Products for household use and not for resale or distribution.

39. The proposed class consists of all consumers who purchased the Products in the State of California for personal use and not for resale, during the time period September 10, 2017, through the present. Excluded from the Class are Defendants, their affiliates, employees, officers and directors, any individual who received remuneration from Defendants in connection with that individual's use or endorsement of the Products, the Judge(s) assigned to this case, and the attorneys of record in this case. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

40. This action is properly brought as a class action for the following reasons:

(a) The members in the proposed class are so numerous that individual joinder of all members is impracticable and disposition of the class members' claims in a single class action will provide substantial benefits to the parties and Court, and is in the best interests of the parties and judicial economy.

(b) Plaintiffs stand on equal footing with and can fairly and adequately protect the

1 interests of all members of the proposed class. All units of the Products bear the
2 misbranded RACC and the “0 Carbs,” “0 glycemic,” and “0 calorie” labelling.
3 Defendants’ misbranded serving size, as well as their untrue statements and “0
4 Carbs,” “0 glycemic,” and “0 calorie” deceptive marketing occur on the
5 packaging of the units of Products themselves. Thus, every individual consumer
6 who purchases the Products is exposed to the false advertising. Defendants have,
7 or have access to, address information for the Class Members, which may be used
8 for the purpose of providing notice of the pendency of this class action. Further,
9 the class definition itself describes a set of common characteristics sufficient to
10 allow a prospective plaintiff or class member to identify himself or herself as
11 having a right to recover based on the description.

12 (c) Plaintiffs will fairly and adequately represent and protect the interests of the
13 class, have no interest incompatible with the interests of the class, and have
14 retained counsel competent and experienced in class actions, consumer
15 protection, and false advertising litigation, including within the context of food
16 and the food industry. Plaintiffs’ attorneys have the experience, knowledge, and
17 resources to adequately and properly represent the interests of the proposed class.
18 Plaintiffs have no interests antagonistic to those of other proposed class members,
19 and they have retained attorneys experienced in consumer class actions and
20 complex litigation as counsel.;

21 (d) Class treatment is superior to other options for resolution of the controversy
22 because the relief sought for each class member is so small, that, absent
23 representative litigation, it would be infeasible for class members to redress the
24 wrongs done to them. Prosecution of separate actions by individual members of
25 the proposed class would create a risk of inconsistent or varying adjudications
26 with respect to individual members of the class and thus establish incompatible
27 standards of conduct for the party or parties opposing the class. Further,
28 individual cases would be so numerous as to inefficiently exhaust judicial

resources. Plaintiffs seek damages and equitable relief on behalf of the proposed class on grounds generally applicable to the entire proposed class.;

(e) Questions of law and fact common to the class predominate over any questions affecting only individual class members. There are questions of law and fact common to the proposed class which predominate over any questions that may affect particular class members. Such questions of law and fact common to Plaintiffs and the class include, without limitation:

- i. Whether Defendants were unjustly enriched by their conduct;
- ii. Whether Class Members suffered an ascertainable loss as a result of Defendants' misrepresentations;
- iii. Whether, as a result of Defendants' misconduct as alleged herein, Plaintiffs and the Class Members are entitled to restitution, injunctive relieve and/or monetary relief, and if so, the amount and natural of such relief;
- iv. Whether Defendants made any statement they knew or should have known were false or misleading;
- v. Whether Defendants maintained a longstanding marketing policy, practice and strategy of labelling, advertising and selling the Products with the misbranded RACC and serving size, and "0 Carbs," "0 glycemic," and "0 calorie" claims, even though the Products failed to confer any of these purported nutritional contents or health benefits.
- vi. Whether the utility of Defendants' practices, if any, outweighed the gravity of the harm to their victims;
- vii. Whether Defendants' conduct violated public policy, included as declared by specific constitutional, statutory, or regulatory provisions;

- viii. Whether Defendants' conduct or any of their practices violated the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, The Federal Food, Drug and Cosmetics Act, 28 U.S.C. §§ 301 *et seq.* and its implementing regulations, 21 C.F.R. §§ 101 *et seq.*, the Cal. Health & Safety Code §§ 109875 *et seq.*, or any other regulation, statute or law;
- ix. Whether Defendants represented that the Products have characteristics, uses, or benefits which they do not have, within the meaning of Cal. Civ. Code § 1770(a)(5);
- x. Whether Defendants represented that the Products are of a particular standard, quality, or grade, when they were really of another, within the meaning of Cal. Civ. Code § 1770(a)(7);
- xi. Whether Defendants advertised the Products with the intent not to sell them as advertised, within the meaning of Cal. Civ. Code § 1770(a)(9);
- xii. Whether Defendants represented that the Products have been supplied in accordance with a previous representation when they have not, within the meaning of Cal. Civ. Code § 1770(a)(16);
- xiii. The proper equitable and injunctive relief;
- xiv. The proper amount of restitution or disgorgement;
- xv. The proper amount of reasonable litigation expenses and attorneys' fees;

(f) Plaintiffs' claims are typical of the claims of the members of the proposed class. Plaintiffs and all class members have been injured by the same practices of Defendants. Plaintiffs' claims arise from the same practices and conduct that give rise to the claims of all class members and are based on the same legal theories. Plaintiffs' claims are typical of class members' claims, as they are based

1 on the same underlying facts, events and circumstances relating to Defendants'
2 conduct.;

3 (g) As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P.
4 23(a), (b)(1), (b)(2) and (b)(3), and may be appropriate for certification "with
5 respect to particular issues" under Rule 23(b)(4).

6 **FIRST CAUSE OF ACTION**

7 **Common Law Fraud**

8 41. Plaintiffs re-allege and incorporate by reference the allegations contained in
9 the paragraphs above as if fully set forth herein.

10 42. Plaintiffs bring this claim individually and on behalf of the members of their
11 proposed Class.

12 43. As discussed above, Defendants provided Plaintiffs and the Class Members
13 with false or misleading material information and failed to disclose material facts about
14 the Products, including but not limited to the fact that they were based on an intentionally
15 lowered serving size and unlawful RACC, and that the Products were not actually zero
16 net carbs, zero glycemic, or zero calorie.

17 44. The misrepresentations and omissions made by Defendants, upon which
18 Plaintiffs the Class Members reasonably and justifiably relied, were intended to induce
19 and actually induced Plaintiffs and Class Members to purchase the Products.

20 45. The fraudulent actions of Defendants caused damage to Plaintiffs and Class
21 Members, who are entitled to damages and other legal and equitable relief as a result.

22 **SECOND CAUSE OF ACTION**

23 **Intentional Misrepresentation**

24 46. Plaintiffs re-allege and incorporate herein by reference each and every
25 allegation set forth above.

26 47. Plaintiffs bring this claim individually and on behalf of the members of their
27 proposed Class.
28

1 48. Defendants represented to Plaintiffs and other class members that important
2 facts were true. More specifically, Defendants represented to Plaintiffs and the other
3 class members through their advertising and labelling scheme for the Products, including
4 that the Products were zero calories, zero glycemic, and zero net carbs.

5 49. Defendants' representations were false. Defendants knew that the
6 misrepresentations were false when they made them, or Defendants made the
7 representations recklessly and without regard for their truth. Defendants intended that
8 Plaintiffs and other class members rely on the representations.

9 50. Plaintiffs and the other class members reasonably relied on Defendants'
10 representations.

11 51. Plaintiffs and the other class members were financially harmed and suffered
12 other damages, including but not limited to, emotional distress. Defendants'
13 misrepresentations and/or nondisclosure were the immediate cause of Plaintiffs and the
14 other class members purchasing the Products. Plaintiffs' and the other class members'
15 reliance on Defendants' representations was the immediate cause of the financial loss
16 and emotional distress (of the type that would naturally result from being led to believe
17 that the food product you are purchasing and consuming is safe for diabetics when in fact
18 it does not) sustained by Plaintiffs and the other class members.

19 52. In absence of Defendants' misrepresentations and/or nondisclosure, as
20 described above, Plaintiffs and the other class members, in all reasonable probability,
21 would not have purchased the Products.

22 **THIRD CAUSE OF ACTION**

23 **Negligent Misrepresentation**

24 53. Plaintiffs re-allege and incorporate by reference the allegations contained in
25 the paragraphs above as if fully set forth herein.

26 54. Plaintiffs bring this claim individually and on behalf of the members of their
27 proposed Class.
28

1 55. As discussed above, Defendants represented the Products as in fact zero net
2 carbs, zero glycemic, and zero calorie, but failed to disclose that the Products actually
3 lacked these advertised nutritional compositions and health advantages. Likewise,
4 Defendants failed to disclose that they perpetuated an unlawful serving size and
5 misbranded RACC. Defendants had a duty to disclose this information.

6 56. At the time Defendants made these misrepresentations, Defendants knew or
7 should have known that these misrepresentations were false or made them without
8 knowledge of their truth or veracity.

9 57. At an absolute minimum, Defendants negligently misrepresented or
10 negligently omitted material facts about the Products. The negligent misrepresentations
11 and omissions made by Defendants, upon which Plaintiffs and Class Members
12 reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs
13 and Class Members to purchase the Products. Plaintiffs and Class Members would not
14 have bought the Products if they had known the true facts.

15 58. The negligent actions of Defendants caused damage to Plaintiffs and Class
16 Members, who are entitled to damages and other legal and equitable relief as a result.

17 **FOURTH CAUSE OF ACTION**

18 **Unjust Enrichment**

19 59. Plaintiffs re-allege and incorporate by reference the allegations contained in
20 the paragraphs above as if fully set forth herein.

21 60. Plaintiffs bring this claim individually and on behalf of the members of their
22 proposed Class.

23 61. Plaintiffs and Class Members conferred benefit on Defendants by
24 purchasing the Products.

25 62. Defendants have been unjustly enriched in retaining the revenues derived
26 from Plaintiffs' and Class Members' purchases of the Products. Retention of those
27 moneys under these circumstances is unjust and inequitable because the Products are
28 misbranded due to Defendants' unlawful serving size, and lack the traits of being zero

1 net carbs, zero glycemic, and zero calorie. Defendants' false advertising and deceptive
2 advertising scheme for the Products resulted in purchasers being denied the full benefit
3 of their purchase because they did not purchase a product that was actually zero net carbs,
4 zero glycemic, or zero calorie.

5 63. Because Defendants' retention of the non-gratuitous benefits conferred on
6 them by Plaintiffs and Class Members is unjust and inequitable, Defendants must pay
7 restitution to Plaintiffs and Class Members for their unjust enrichment, as ordered by the
8 Court.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of Cal. Civ. Code §§1750, *et seq.***

11 64. Plaintiffs re-allege and incorporate by reference the allegations contained in
12 the paragraphs above as if fully set forth herein.

13 65. Plaintiffs bring this claim individually and on behalf of the members of their
14 proposed Class.

15 66. This cause of action is brought pursuant to the Consumers Legal Remedies
16 Act, California Civil Code §§ 1750, *et seq.* ("CLRA"). The CLRA prohibits any unfair,
17 deceptive, and/or unlawful practices, as well as unconscionable commercial practices in
18 connection with the sales of any goods or services to consumers. *See* Cal. Civ. Code
19 §1770.

20 67. The CLRA "shall be liberally construed and applied to promote its
21 underlying purposes, which are to protect consumers against unfair and deceptive
22 business practices and to provide efficient economical procedures to secure such
23 protection." Cal. Civ. Code § 1760.

24 68. Defendants are each a "person" under the CLRA. Cal. Civ. Code §1761 (c).

25 69. Plaintiffs and the putative Class Members are "consumers" under the CLRA.
26 Cal. Civ. Code §1761 (d).

27 70. The Products constitute a "good" under the CLRA. Cal. Civ. Code §1761
28 (a).

1 71. Plaintiffs and the putative Class Members' purchases of the Products within
2 the Class Period constitute "transactions" under the CLRA. Cal. Civ. Code §1761 (e).

3 72. Defendants' actions and conduct described herein reflect transactions that
4 have resulted in the sale of goods to consumers.

5 73. Defendants' failure to label the Products in accordance with California
6 labelling requirements constitutes an unfair, deceptive, unlawful and unconscionable
7 commercial practice.

8 74. Defendants' actions have violated at least seven provisions of the CLRA,
9 including §§ 1770(a)(1), 1770 (a)(2), 1770 (a)(3) 1770(a)(5), 1770(a)(7), 1770 (a)(9) and
10 1770(a)(16).

11 75. As a result of Defendants' violations, Plaintiffs and the Class suffered, and
12 continue to suffer, ascertainable losses in the form of the purchase price they paid for the
13 unlawfully labelled and marketed Products, which they would not have paid had the
14 Products been labelled correctly, or in the form of the reduced value of the Products
15 relative to the Products as advertised and the retail price they paid.

16 76. Pursuant to § 1782 of the CLRA Plaintiffs apprised Defendants in writing
17 of the particular violations of § 1770 of the CLRA, and demanded Defendants rectify the
18 actions described above by providing monetary relief, agreeing to be bound by their legal
19 obligations, and to give notice to all affected consumers of their intent to do so. On or
20 about September 10, 2021, a notice and demand letter was sent to Defendants, notifying
21 Defendants of their violations of the CLRA and demanding that within 30 days,
22 Defendants remedy the unlawful, unfair, false, and/or deceptive practices complained of
23 herein. Plaintiffs advised Defendants that if they refused the demand, Plaintiffs would
24 seek monetary damages for themselves and all others similarly situated, as well as
25 injunctive relief, restitution, and any other relief the Court may deem just and proper.
26 Defendants have failed to comply with the letter. Consequently, pursuant to California
27 Civil Code §1782, Plaintiffs, on behalf of themselves and all other members of the Class,
28

1 seeks compensatory damages and restitution of any ill-gotten gains due to Defendants'
2 acts and practices that violate the CLRA.

3 77. Defendants have failed to rectify or agree to rectify at least some of the
4 violations associated with actions detailed above and give notice to all affected
5 consumers within 30 days of receipt of the Cal. Civ. Code § 1782 notice. Thus, Plaintiffs
6 seeks actual damages and punitive damages for violations of the Act.

7 78. In addition, pursuant to Cal. Civ. Code §1780(a)(2), Plaintiffs are entitled
8 to, and therefore seek, a Court order enjoining the above-described wrongful acts and
9 practices that violate Cal. Civ. Code §1770.

10 79. Plaintiffs and Class Members are also entitled to recover attorneys' fees,
11 costs, expenses, disbursements, and punitive damages pursuant to Cal. Civ. Code §§
12 1780 and 1781.

13 80. Notably, shortly after being notified about its CLRA violations described
14 herein, and apprised of potential litigation, Defendant Nutrishus changed the Products'
15 labelling and packaging scheme. These modifications included the fact that Products'
16 nutritional panel was amended to reflect a serving size of two tablespoons, the RACC
17 established by the FDA, in place of Defendant Nutrishus' deceptive RACC amount.
18 Moreover, Defendant Nutrishus conspicuously omitted the Products "safe for diabetics"
19 claims after September 2021. Clearly, Defendant Nutrishus changed its
20 misrepresentations because of Plaintiffs' instant litigation. Plaintiffs' lawsuit motivated
21 Defendant Nutrishus to voluntarily provide one of the forms injunctive relief sought in
22 this litigation. Furthermore, as affirmed by the California Supreme Court, Plaintiffs here
23 are already "successful" within the meaning of Cal. Code of Civ. Proc. Section 1021.5
24 because their lawsuit was a catalyst motivating Defendant Nutrishus to provide the
25 "primary relief" sought, Plaintiffs' lawsuit had "merit" and achieved its catalytic effect
26 by "threat of victory, not by dint of nuisance and threat of expense," and since Plaintiffs
27 reasonable attempted to settle the litigation prior to filing the suit. See *Graham v.*
28 *DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553; see also *Tipton-Whittingham v. City of*

1 *Los Angeles* (2004) 34 Cal. 4th 604. Likewise, Plaintiffs are already entitled to attorneys’
2 fees here because “[Defendant Nutrishus] change[d] [its] behavior substantially because
3 of, and in the sought by [Plaintiffs].” *Skinner v. Ken’s Foods, Inc.* (2020) 53 Cal. App.
4 5th 938, 946 (citing *Folsom v. Butte County Assn. of Governments* (1982) 32. Cal. 3d
5 668, 685).

6 **SIXTH CAUSE OF ACTION**

7 **Violation of California Business & Professions Code §§ 17500, *et seq.***

8 81. Plaintiffs re-allege and incorporate by reference the allegations contained in
9 the paragraphs above as if fully set forth herein.

10 82. Plaintiffs bring this claim individually and on behalf of the members of their
11 proposed Class.

12 83. Defendants engaged in unfair and deceptive acts and practices, in violation
13 of the California Business and Professions Code § 17500 *et seq.*, by marketing and/or
14 selling the Products without disclosure of material fact about the Products. These acts
15 and practices, as described above, have deceived Plaintiffs and other class members,
16 causing them to lose money as herein alleged and have deceived and are likely to deceive
17 the consuming public, in violation of those sections. Accordingly, Defendants’ business
18 acts and practices, as alleged herein, have caused injury to Plaintiffs and the other class
19 members.

20 84. As detailed above, Defendants had a duty to disclose the Products’
21 misbranded serving size value, as well as the fact that the Products’ actually were not
22 zero net carbs, zero glycemic, or zero calorie, because this information reflected material
23 facts of which Defendants had exclusive knowledge. Defendants actively concealed
24 these material facts and Defendants made partial representations about the Products but
25 suppressed some material facts. Defendants’ misrepresentation and/or nondisclosure of
26 the material fact was the immediate cause of Plaintiffs and the other class members
27 purchasing the Products. In the absence of Defendants’ misrepresentation and/or
28 nondisclosure of facts, as described above, Plaintiffs and other class members would not

1 have purchased the Products.

2 85. Plaintiffs and the other class members are entitled to relief, including full
3 restitution and/or disgorgement of all revenues, earnings, profits, compensation, and
4 benefits which may have been obtained by Defendants as a result of such business acts
5 or practices, and enjoining Defendants to cease and desist from engaging in the practices
6 described herein.

7 **SEVENTH CAUSE OF ACTION**

8 **Violation of Business & Professions Code § 17200, *et seq.***

9 86. Plaintiffs re-allege and incorporate by reference the allegations contained in
10 the paragraphs above as if fully set forth herein.

11 87. Plaintiffs seek to represent a Class consisting of “All persons who purchased
12 the Products in the State of California for personal use and not for resale during the time
13 period September 10, 2017, through the present. Excluded from the Class are
14 Defendants’ officers, directors, and employees, and any individual who received
15 remuneration from Defendants in connection with that individual’s use or endorsement
16 of the Products.”

17 88. The UCL prohibits “any unlawful, unfair... or fraudulent business act or
18 practice.” Cal. Bus & Prof. Code § 17200.

19 **A. “Unfair” Prong**

20 89. Pursuant to California’s Unfair Competition Law, Cal. Bus. & Prof. Code §
21 17200, *et seq.*, a challenged activity is “unfair” when “any injury it causes outweighs any
22 benefits provided to consumers and the injury is one that the consumers themselves could
23 not reasonably avoid,” *or* “the utility of the defendant’s conduct is outweighed by the
24 gravity of the harm to the alleged victim.

25 90. Defendants’ actions of engaging in false and deceptive advertising,
26 marketing, labelling, and of the Products do not confer any benefit to consumers.

27 91. Defendants’ actions of advertising, marketing, labelling, and the Products in
28 a false, deceptive and misleading manner cause injuries to consumers because the

1 consumers do not receive a syrup alternative commensurate with their reasonable
2 expectation.

3 92. Defendants' actions of advertising, marketing, labelling, and the Products in
4 a false, deceptive and misleading manner cause injuries to consumers because the
5 consumers do not receive the benefits they reasonably expect from the Products.

6 93. Defendants' actions of advertising, marketing, and labelling the Products in
7 a false, deceptive and misleading manner cause injuries to consumers because the
8 consumers end up consuming a syrup alternative that is of a lower quality than what they
9 reasonably were expecting and sought.

10 94. Defendants' actions of advertising, marketing, and labelling the Products in
11 a false, deceptive and misleading manner cause injuries to consumers because the
12 consumers end up overpaying for the Products and receiving a syrup alternative that is
13 less than what they expected to receive.

14 95. Consumers cannot avoid any of the injuries caused by Defendants' false,
15 misleading and deceptive labelling, advertising, and marketing of the Products.

16 96. Accordingly, the injuries caused by Defendants' activity of advertising,
17 marketing, and labelling the Products in a false, deceptive and misleading manner
18 outweigh any benefits.

19 97. Here, Defendants' conduct of advertising, labelling and marketing the
20 Products in a false, deceptive, and misleading manner has no utility and financially harms
21 purchasers. Thus, the utility of Defendants' conduct is vastly outweighed by the gravity
22 of harm.

23 98. Defendants' labelling, marketing, and advertising of the Products, as alleged
24 in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and
25 constitutes unfair conduct.

26 99. Defendants knew or should have known of their unfair conduct.

27 100. As alleged in the preceding paragraphs, the misrepresentations by
28 Defendants detailed above constitute an unfair business practice within the meaning of

1 California Business and Professions Code § 17200.

2 101. There were reasonable available alternatives to further Defendants'
3 legitimate business interests, other than the conduct described herein. Defendants could
4 have marketed, labelled, advertised and packaged the Products truthfully, without any
5 dishonest claims about the Products' nutrient levels and health benefits.

6 102. All of the conduct alleged herein occurs and continues to occur in
7 Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized
8 course of conduct repeated on thousands of occasions daily.

9 103. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs
10 and the Class seek an order of this Court enjoining Defendants from continuing to
11 engage, use, or employ their practice of advertising, labelling and marketing the Products
12 in an untruthful manner. Likewise, Plaintiffs and the Class seek an order requiring
13 Defendants to disclose such misrepresentations, and additionally request an order
14 awarding Plaintiffs restitution of the money wrongfully acquired by Defendants by
15 means of responsibility attached to Defendants' failure to disclose the existence and
16 significance of said misrepresentations in an amount to be determined at trial. Plaintiffs
17 and the Class Members also seek full restitution of all monies paid to Defendants as a
18 result of their deceptive practices, interest at the highest rate allowable by law and the
19 payment of Plaintiffs' attorneys' fees and costs pursuant to, *inter alia*, California Civil
20 Code Procedure §1021.5.

21 104. As a direct and proximate result of these acts, consumers have been and
22 continue to be harmed. Plaintiffs and the Class Members have suffered injury and actual
23 out-of-pocket losses as a result of Defendants' violation of the unfair prong of the UCL
24 because Plaintiffs and the Class would not have bought the Products if they had known
25 the truth regarding the manipulated serving size and actual nutritional values of the
26 Products. Plaintiffs and the Class paid an increased price due to the misrepresentations
27 about the Products and the Products did not have the promised quality, effective, or value.

28 ///

1 **B. “Fraudulent” Prong**

2 105. California Business and Professions Code § 17200, *et seq.*, considers
3 conduct fraudulent and therefore prohibits said conduct if it is likely to deceive members
4 of the public.

5 106. Defendants’ marketing, labelling, and advertising of the Products, as alleged
6 in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and
7 constitutes fraudulent conduct. As alleged in the preceding paragraphs, the
8 misrepresentations by Defendants detailed above constitute a fraudulent business
9 practice in violation of California Business & Professions Code § 17200 because they
10 are likely to, and did indeed, deceive members of the public.

11 107. Defendants knew or should have known of their fraudulent conduct.

12 108. There were reasonable available alternatives to further Defendants’
13 legitimate business interests, other than the conduct described herein. Defendants could
14 have labelled, advertised, marketed and packaged the Products accurately.

15 109. All of the conduct alleged herein occurs and continues to occur in
16 Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized
17 course of conduct repeated on thousands of occasions daily.

18 110. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs
19 and the Class seek an order of this Court requiring Defendants to cease the acts of
20 fraudulent competition alleged herein. Likewise, Plaintiffs and the Class seek an order
21 requiring Defendants to disclose such misrepresentations, and additionally request an
22 order awarding Plaintiffs restitution of the money wrongfully acquired by Defendants by
23 means of responsibility attached to Defendants’ failure to disclose the existence and
24 significance of said misrepresentations in an amount to be determined at trial. Plaintiffs
25 and the Class Members also seek full restitution of all monies paid to Defendants as a
26 result of their deceptive practices, interest at the highest rate allowable by law and the
27 payment of Plaintiffs’ attorneys’ fees and costs pursuant to, *inter alia*, California Civil
28 Code Procedure §1021.5.

111. As a direct and proximate result of these acts, consumers have been and continue to be harmed. Plaintiffs and the Class Members have suffered injury and actual out-of-pocket losses as a result of Defendants' violation of the fraudulent prong of the UCL because Plaintiffs and the Class would not have bought the Products if they had known the truth regarding the nutritional content and physiological side effects the Products. Plaintiffs and the Class paid an increased price due to the misrepresentations about the Products and the Products did not have the promised quality, effectiveness, or value.

C. "Unlawful" Prong

112. California Business and Professions Code § 17200, *et seq.*, identifies violations of other laws as "unlawful practices that the unfair competition law makes independently actionable."

113. Defendants' labelling and marketing of the Products, as alleged in the preceding paragraphs, violates California Civil Code § 1750, *et. seq.*, California Business and Professions Code § 17500, *et. seq.*, California's Sherman Law, and the FDCA.

114. Defendants' labelling and marketing of the Products, as alleged in the preceding paragraphs, is false, deceptive, misleading, and unreasonable, and constitutes unlawful conduct. Defendants have violated the "unlawful prong" by violating, the FDCA, California's Sherman Law, as well as the State's FAL (Cal. Bus. & Prof. Code § 17500 *et seq.*) and CLRA (Cal. Civ. Code §1770 *et. seq.*).

115. Defendants knew or should have known of their unlawful conduct.

116. As alleged in the preceding paragraphs, the misrepresentations by Defendants detailed above constitute an unlawful business practice within the meaning of California Business and Professions Code § 17200.

117. There were reasonable available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

118. All of the conduct alleged herein occurred and continues to occur in Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized

1 course of conduct repeated on thousands of occasions daily.

2 119. As a direct and proximate result of these acts, consumers have been and
3 continue to be harmed. Plaintiffs and the Class Members have suffered injury and actual
4 out-of-pocket losses as a result of Defendants' violation of the unlawful prong of the
5 UCL because Plaintiffs and the Class would not have bought the Products if they had
6 known the truth regarding nutritional components and potential harms of the Products.
7 Plaintiffs and the Class paid an increased price due to the misrepresentations about the
8 Products and the Products did not have the promised quality, effectiveness, or value.

9 120. Pursuant to Bus. & Prof. Code §§ 17203 and 17535, Plaintiffs and the Class
10 are therefore entitled to an order requiring Defendants to cease the acts of unfair
11 competition alleged herein, full restitution of all monies paid to Defendants as a result of
12 their deceptive practices, interest at the highest rate allowable by law and the payment of
13 Plaintiffs' attorneys' fees and costs pursuant to, *inter alia*, California Civil Code
14 Procedure §1021.5.

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class
17 defined herein, prays for judgment and relief on all Causes of Action as follows:

- 18 A. This action be certified and maintained as a class action and certify the
19 proposed class as defined, appointing Plaintiffs representatives of the Class,
20 and appointing the attorneys and law firms representing Plaintiffs as counsel
21 for the Class;
- 22 B. For an order declaring the Defendants' conduct violates the statutes
23 referenced herein;
- 24 C. That the Court awards compensatory, statutory and/or punitive damages as
25 to all Causes of Action where such relief is permitted;
- 26 D. That the Court awards Plaintiffs and proposed class members the costs of
27 this action, including reasonable attorneys' fees and expenses;
28

- 1 E. For an order enjoining Defendants from continuing to engage in the unlawful
2 conduct and practices described herein;
- 3 F. That the Court awards equitable monetary relief, including restitution and
4 disgorgement of all ill-gotten gains, and the imposition of a constructive
5 trust upon, or otherwise restricting the proceeds of Defendants' ill-gotten
6 gains, to ensure that Plaintiffs and proposed class members have an effective
7 remedy;
- 8 G. That the Court awards pre-judgment and post-judgment interest at the legal
9 rate;
- 10 H. That the Court orders appropriate declaratory relief; and
- 11 I. That the Court grants such other and further as may be just and proper.

12 **JURY DEMAND**

13 Plaintiffs demand a trial by jury on all issues so triable.
14
15
16

17 Dated: December 2, 2022

DOGRA LAW GROUP PC

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21 By:



22 SHALINI DOGRA, ESQ.

23 Attorneys for Plaintiffs
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